

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 497

Heard at Montreal, Tuesday, February 11, 1975

Concerning

CANADIAN NATIONAL RAILWAY COMPANY

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS

Dispute:

Eighty-six claims of spare employees in Customer and Catering Services at Toronto for payment of held time at Montreal between December 17, 1973 and January 9, 1974, inclusive.

JOINT STATEMENT OF ISSUE:

During the period of December 17, 1973 and January 9, 1974, turbo equipment was utilized in extra passenger services between Toronto and Montreal leaving Toronto and Montreal; on the Rapido's departure time at 1630 hours.

Spare employees assigned to these turbo trains claimed payment of held time at the distant terminal under Article 4.18 of Agreement 5.8.

The Company declined the claims on the basis that the turbo trains during the aforementioned period were operated as sections of the Rapido trains and Article 4.18 has no application in such operations.

FOR THE EMPLOYEES: FOR THE COMPANY:

(SGD.) J. A. PELLETIER (SGD.) S. T. COOKE

NATIONAL Vice-President ASSISTANT VICE-PRESIDENT, LABOUR RELATIONS

There appeared on behalf of the Company:

O. W. McNamara – System Labour Relations Officer, Montreal

W. W. Fitzgerald – Operations Officer, Customer & Catering Services, Toronto

J. R. Kish – System Administrative Officer, Customer & Catering Services, Montreal

J. P. Labelle – Superintendent, Customer & Catering Services, Montreal

And on behalf of the Brotherhood:

J. D. Hunter – Regional Vice-President, Toronto

J. A. Pelletier – National Vice-President, Montreal

J. Huggins – Local Chairman, Toronto

D. Braithwaite – Secretary, Grievance Committee, Toronto

AWARD OF THE ARBITRATOR

Article 4.18 of the collective agreement is as follows:

4.18 Employees assigned to a special train, and also employees assigned to extra equipment attached to regular trains (or sections thereof) of which the entire operation does not coincide with a regular run, will be considered as employees assigned to a special movement.

Such employees shall be paid from the time required to report for duty until released from duty, with deductions made for rest periods in accordance with Article 4.17.

Employees assigned to special movements and held at distant terminals or stopovers en route will be paid eight hours for each 24-hour period or actual time of up to eight hours for less than a 24-hour period, in each case the time to be computed from expiration of eight hours after release from duty.

The issue in this case is whether the employees concerned were assigned to "a special movement" within the meaning of article 4.18.

During the period referred to, the timetable in effect established four Rapido trains operating daily between Toronto and Montreal. Those departing Toronto were Train No. 60 (the noon Rapido) and Train No. 66, which left at 1630. Those departing Montreal were Trains No. 61 and 67, respectively.

In late 1973 the Company made plans to replace conventional equipment on trains 66 and 67 with turbo equipment on or about January 10, 1974. This was in fact done, and the timetable thereafter showed the noon Rapido as continuing, whereas train 67 is now shown as Turbo departing Montreal at 1630, and train 66 as Turbo departing Toronto at 1630, daily. The Turbo equipment and service differs from the equipment and service on a conventional train, and it is common ground that the introduction of the turbo service in substitution for some of the preceding rapido service constituted a "Technological change", for the purposes of the Job Security Agreement, and the appropriate notice was given under that agreement.

Before the actual institution of the timetable change above described – that is, before the actual institution of turbo service in the form of regular trains – the Company utilized turbo equipment, during the period here in question, to provide extra passenger services and to enable it to evaluate the train under service conditions. Accordingly, the Company then purported to operate trains 66 and 67 in "sections" during the period from December 17, 1973, to January 9, 1974, that is the period in question in this case. The turbo trains were considered as "advance sections" of the rapido trains and left Toronto (and Montreal) on the Rapido's departure time of 1630 hours, making the same en route stops as the Rapido, but arriving at the distant terminal at 2040 hours. The regular Rapido trains left the originating terminals on a five-minute block at 1635 hours, and were schedule to arrive at their regular time of 2129 hours.

It would be possible for the Rapido train to be operated in sections, and it is clear that Article 4.18 does not contemplate that a section of such a train would constitute a "Special Movement". On the contrary, a section of a regular train seems to be contemplated as being in effect, the regular train for the purposes of that article. Extra equipment may be attached to a regular train, or to a section thereof, and that extra equipment would not be involved in a "Special Movement" unless some part of its operation did not coincide with the regular run.

In the instant case the turbo equipment was "extra equipment". It was not attached to the Rapido, nor to a section of the Rapido, but, it is argued, it constituted a section of the Rapido in itself. The Union contends on the other hand, that the turbo operation at this time constituted either a "special train", or, alternatively, that it was "extra equipment attached" to a regular train "of which the entire operation does not coincide with a regular run". The effect, in either case, would be the same.

In my view, it would not be accurate to say that the turbo equipment used at this time was "attached" to a regular train or a section thereof, since it appears to me that that term should be read as requiring the physical attaching of extra equipment to regular equipment. Here, the turbo equipment was operated as an independent unit, and considered by the Company to be a "section" of the Rapido train, not as an attachment to it. If, however, I am wrong in this, and the turbo equipment should be regarded as "attached" to the regular train or to a section thereof, then I think it must be said that "the entire operation" did not coincide with a regular run. The phrase used is, I think, rather insistent, and while the two operations were carried out between the same points, they were not the same from the point of view of time of run or of service provided. The effect of the Company's argument is that the turbo equipment, and the turbo operation at that time "really" constituted a Rapido, but that is contrary to the facts relating to the nature of the different sorts of equipment and their operation. These differences, of course, were the foundation of the determination that the subsequent replacement, on trains 66 and 67, of conventional equipment by turbo equipment and service constituted a "technological change".

In my view, the most apt characterization of the operation of the turbo equipment during the period in question is as that of a "special train" within the meaning of Article 4.18. While that phrase certainly includes the more obvious cases cited by the Company of campaign trains, certain excursion trains, and the like, it is my view that it also extends to cover cases such as this where new and different equipment is operated "in revenue testing service", as the Company put it, with its own distinctive features from the point of view of speed and service. It is not entirely without significance, I think, that the Turbos were known "for passenger or public purposes" as trains 62 and 63. It is my conclusion on the material before me that these trains were not sections of the Rapido train. They were, in fact, Turbo trains, and while they might have filled some of the

purposes of a "section" by carrying some of the passenger load anticipated at that time of year, they were not in fact Rapido trains, and were not in other respects comparable to Rapido trains or to sections thereof. Rather, as I find the operations in question were "special trains" within the meaning of article 4.18 during the period here in question.

Accordingly, the employees assigned to such "special trains" are to be considered as having been assigned to a "Special Movement", and as such are entitled to the benefit of Article 4.18. For the foregoing reasons, the grievance is allowed.

(signed) J. F. W. WEATHERILL

ARBITRATOR